

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

WILLIAM J. BAILEY)	
Claimant)	
VS.)	
)	Docket No. 190,491
BABCOCK & WILCOX CONSTRUCTION COMPANY, INC.)	
Respondent)	
AND)	
CIGNA INSURANCE COMPANY)	
Insurance Carrier)	
AND)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

On November 21, 1996, the application of both claimant and respondent for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge Robert H. Foerschler on June 7, 1996, came on for oral argument.

APPEARANCES

Claimant appeared by his attorney, Jan L. Fisher of Topeka, Kansas. Respondent and its insurance carrier appeared by their attorney, Gary R. Terrill of Overland Park, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, James E. Phalen of Kansas City, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

Claimant appealed the following issues to the Appeals Board:

- (1) What if any is the nature and extent of claimant's injury and/or disability?
- (2) Claimant's entitlement to future medical expense.

Respondent appealed the following issues to the Appeals Board:

- (1) Whether claimant suffered personal injury by accident on the date alleged.
- (2) Whether claimant's accidental injury arose out of and in the course of his employment with respondent.
- (3) Notice.
- (4) Claimant's entitlement to additional temporary total disability compensation benefits.
- (5) Claimant's entitlement to past medical expenses.
- (6) Claimant's entitlement to future medical expenses.

Additional issues before the Administrative Law Judge but not appealed to the Appeals Board are herein affirmed insofar as they do not contradict the findings expressed herein.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record including the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Administrative Law Judge sets out findings of fact and conclusions of law in some detail in the Award and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are both accurate and appropriate and the Appeals Board adopts the same as its own findings and conclusions as if specifically set forth herein. The Appeals Board specifically notes that claimant did suffer accidental injury on March 17 & 18, 1994, while working for the

respondent. This accidental injury resulted in a hiatal hernia for which claimant was provided medical treatment and temporary total disability compensation. Claimant's left arm complaints and the pain symptomatology resulting from the abdominal adhesions after the surgery do not establish a whole body impairment. Claimant's left upper extremity symptomatology improved per the records of Jace W. Hyder, M.D., to the level experienced by claimant after his first surgery in November 1993. The abdominal pain suffered by claimant results from the surgical repairs and the resulting adhesions are a normal and expected result of hernia surgery.

The Appeals Board finds the medical testimony presented from Dr. Hyder, the treating physician, to be the most persuasive and credible and adopts the same as its own opinion.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Robert H. Foerschler dated June 7, 1996, should be, and is hereby, affirmed in all respects and the claimant, William J. Bailey, is granted an award against respondent, Babcock & Wilcox Construction Company, Inc., and its insurance carrier, CIGNA Insurance Company, and the Kansas Workers Compensation Fund for an accidental injury occurring on March 17 & 18, 1994.

Claimant is entitled to 26.28 weeks temporary total disability compensation at the rate of \$313 per week totaling \$8,225.64 which is ordered paid in one lump sum minus amounts previously paid.

Claimant's medical expenses in the amount of \$17,559.59 are granted as part of this award.

Per the stipulations of the parties the Kansas Workers Compensation Fund is liable for 50% of this award including all compensation, medical expenses, and costs. The cost of the transcripts and the record are taxed against the respondent, its insurance carrier, and the Kansas Workers Compensation Fund as agreed by the parties, as follows:

Don K. Smith & Associates	\$1,325.00
Hostetler & Associates, Inc.	\$1,119.20
Gene Dolginoff Associates, Ltd.	\$ 582.15

IT IS SO ORDERED.

Dated this ____ day of November 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jan L. Fisher, Topeka, KS
Gary R. Terrill, Overland Park, KS
James E. Phalen, Kansas City, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director